

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

8 JAMES R. McDANIEL, JR., }
9 Plaintiff, }
10 v. }
11 ELY STATE PRISON et al., }
12 Defendants. }
13 }

3:16-cv-00259-MMD-WGC
ORDER

14 This action is a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a
15 state prisoner. Plaintiff has submitted an application to proceed *in forma pauperis*.
16 (ECF No. 2). Based on the financial information provided, the Court finds that Plaintiff is
17 unable to prepay the full filing fee in this matter.

18 The Court entered a screening order on December 30, 2016. (ECF No. 9). The
19 screening order imposed a 90-day stay and the Court entered a subsequent order in which
20 the parties were assigned to mediation by a court-appointed mediator. (ECF No. 9, 14).
21 The Office of the Attorney General has filed a status report indicating that settlement has
22 not been reached and informing the Court of its intent to proceed with this action.
23 (ECF No. 20).

24 For the foregoing reasons, IT IS ORDERED that:

25 1. Plaintiff's application to proceed *in forma pauperis* (ECF No. 2) is GRANTED.
26 Plaintiff previously paid an initial installment of \$3.33 toward the filing fee (ECF No. 1). In
27 the event that this action is dismissed, the full filing fee must still be paid pursuant to
28 28 U.S.C. § 1915(b)(2).

1 2. The movant herein is permitted to maintain this action to conclusion without
2 the necessity of prepayment of any additional fees or costs or the giving of security
3 therefor. This order granting leave to proceed *in forma pauperis* shall not extend to the
4 issuance and/or service of subpoenas at government expense.

5 3. Pursuant to 28 U.S.C. § 1915(b)(2), the Nevada Department of Corrections
6 shall pay to the Clerk of the United States District Court, District of Nevada, 20% of the
7 preceding month's deposits to Plaintiff's account (**James R. McDaniel, Jr. , #79536**), in the
8 months that the account exceeds \$10.00, until the full \$350.00 filing fee has been paid for
9 this action. The Clerk of the Court shall **SEND** a copy of this order to the Finance Division
10 of the Clerk's Office. The Clerk of the Court shall also **SEND** a copy of this order to the
11 attention of the Chief of Inmate Services for the Nevada Department of Corrections,
12 P.O. Box 7011, Carson City, NV 89702.

13 4. The Clerk of the Court shall electronically **SERVE** a copy of this order and a
14 copy of Plaintiff's complaint (ECF No. 10) on the Office of the Attorney General of the
15 State of Nevada, attention Kat Howe.

16 5. Service must be perfected within ninety (90) days from the date of this order
17 pursuant to Fed. R. Civ. P. 4(m).

18 6. Subject to the findings of the screening order (ECF No. 9), within **twenty-one**
19 (**21**) **days** of the date of entry of this order, the Attorney General's Office shall file a notice
20 advising the Court and Plaintiff of: (a) the names of the defendants for whom it accepts
21 service; (b) the names of the defendants for whom it does not accept service, and (c) the
22 names of the defendants for whom it is filing the last-known-address information under
23 seal. As to any of the named defendants for whom the Attorney General's Office cannot
24 accept service, the Office shall file, *under seal*, but shall not serve the inmate Plaintiff the
25 last known address(es) of those defendant(s) for whom it has such information. If the last
26 known address of the defendant(s) is a post office box, the Attorney General's Office shall
27 attempt to obtain and provide the last known physical address(es).

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1 7. If service cannot be accepted for any of the named defendant(s), Plaintiff
2 shall file a motion identifying the unserved defendant(s), requesting issuance of a
3 summons, and specifying a full name and address for the defendant(s). For the
4 defendant(s) as to which the Attorney General has not provided last-known-address
5 information, Plaintiff shall provide the full name and address for the defendant(s).

6 8. If the Attorney General accepts service of process for any named
7 defendant(s), such defendant(s) shall file and serve an answer or other response to the
8 complaint within **sixty (60) days** from the date of this order.

9 9. Henceforth, Plaintiff shall serve upon defendant(s) or, if an appearance has
10 been entered by counsel, upon their attorney(s), a copy of every pleading, motion or other
11 document submitted for consideration by the Court. Plaintiff shall include with the original
12 document submitted for filing a certificate stating the date that a true and correct copy of
13 the document was mailed or electronically filed to the defendants or counsel for the
14 defendants. If counsel has entered a notice of appearance, Plaintiff shall direct service to
15 the individual attorney named in the notice of appearance, at the physical or electronic
16 address stated therein. The Court may disregard any document received by a district
17 judge or magistrate judge which has not been filed with the Clerk, and any document
18 received by a district judge, magistrate judge, or the Clerk which fails to include a certificate
19 showing proper service.

20 || DATED: April 3, 2017.

Walter G. Cobb

United States Magistrate Judge